

Date of decision: 16-12-1995

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr. P.M.Thakkar for the petitioner  
Mr. D.A.Bambania for the respondents.

Coram: S.K. KESHOTE,J  
(16-12-1995)

ORAL JUDGMENT:

Heard the learned counsel for the parties.

The petitioner who was employed by the erstwhile

State of Saurashtra, on the merger of the said State in the bi-lingual State of Bombay, was absorbed in the service of State of Bombay. The present petition has been filed praying therein that the respondents may be directed by issue of writ of mandamus or any appropriate writ order or direction to regularise the services of the petitioner by fixing his seniority in the parent department and promoting the petitioner as per his legitimate right.

2. The facts of the case which are relevant for the purpose of deciding the controversy which is arising in the writ petition need to be briefly stated. The petitioner was appointed on 1-2-1951 as English Typist in the office of the Director of Food Supplies of the former Saurashtra State. On 1-5-1951 the petitioner was transferred to the office of the Chief Excise Inspector in Saurashtra. Later on the petitioner was confirmed on the post of typist in the Excise Department of the said State. These facts are given out from the affidavit-in-reply filed by respondent No.3, which has not been controverted by the petitioner by filing any rejoinder. Integration of the former State of Saurashtra in the bi-lingual State of Bombay has taken place from 31st January, 1957. The services of the petitioner were allotted to the Commissioner, Rajkot Division, and not in the Excise and Prohibition Department. The petitioner's seniority has also been fixed in the final seniority list of Junior Clerks/Typists of Saurashtra and Kutch Zone as on 31-3-1968, vide office order dated 30th May, 1970 which was subsequently revised vide office order dated 3-8-1973 wherein his name has been shown at serial No.48A. The petitioner, after accepting his allotment, and having settled in the said Department at one point of time, has chosen to be repatriated to the Prohibition and Excise Department. As it transpires from annexure-A at page 10 of the writ petition, he submitted application on 17-2-1975 to the Prohibition and Excise Department praying therein to take him in the said department and assign him appropriate seniority and promotion. This application of the petitioner has been decided vide letter dated 23rd June, 1975 annexure-A. This request of the petitioner was turned down by the Excise and Prohibition Department on the ground that in case he was interested in absorption in Prohibition and Excise Department he should have represented immediately on his allocation to other department which has taken place on 1-2-1957. Even though, the Prohibition and Excise Department of the State of Gujarat has given the option to the petitioner, if he was willing to be repatriated to the said Department, that he could be considered for appointment as English Typist which post he held substantively in the former State of Saurashtra. His request for absorption in the higher post on the basis of service on the post of

typist was declined, as in the Department seniority for the purpose of promotion is counted from the date of passing the departmental examination for the clerks. This order of 1975 has not been challenged by the petitioner in any way prior to the filing of the writ petition. The present writ petition before this Court was filed by the petitioner on 5th July, 1983, that is, about eight years thereafter, and about sixteen years from the date of assignment of seniority to him in the Department in which he has been absorbed or allotted.

3. Two-fold contentions have been raised by the learned counsel for the petitioner. Firstly it has been contended that the condition of passing departmental examination by the allocated Government Servants of erstwhile Saurashtra State was relaxed. In this respect reference has been made to Circular dated June 23, 1975. It is true that the circular dated 20th March, 1970 grants exemption in regard to the condition of passing of departmental examination by the allocated Government servants. But the respondents have come up with the case in the reply which has not been controverted by the petitioner that the Government Circular dated 20th March, 1970 had subsequently been amended vide Government Circular dated 17th March, 1980 wherein it has been specifically clarified that so far as promotion is concerned, the Government servants shall have to pass the prescribed departmental examination. That subsequent circular has not been challenged by the petitioner in this writ petition. Not only this, even the petitioner has not made reference to the said circular. The petitioner has also not disclosed the fact that he has been assigned seniority already in the other Department. The respondents have also come up with the case that the petitioner has conveniently concealed to mention an important fact. Respondent No.3 has come up with the case that annexure-A was written to the petitioner with a view to consider his case sympathetically to which he had not agreed. The petitioner conveniently omitted to annex a copy of office memorandum No.MKM/9-3/78/KH/112 dated 17-6-1978 whereunder he was also informed of the above facts. At this stage, though I consider it to be of vital concern, I do not consider it to be proper to dismiss this petition on this ground.

4. The first contention of the learned counsel for the petitioner is not acceptable for three reasons. Firstly the circular on which reliance has been placed was subsequently changed and that circular has not been challenged by the petitioner. Secondly it is not the case of the petitioner that any of the person junior to him has been given promotion in any of the department and has been

given promotion without passing the departmental examination for promotion. Lastly the petitioner has not raised any voice against the letter annexure-A for considerably long time. In fact, by his conduct of not approaching this court in time has allowed the things to further settle. Much insistence has been placed by the learned counsel for the petitioner that many persons as enumerated in para 7(a) of the writ petition which has been inserted by way of amendment have been given promotion without passing departmental examination. I have gone through the contents of para 7(a) of the writ petition. I do not find a single name, in the list given out in the said para, from the Prohibition and Excise Department. Not only this, all other necessary and relevant facts have not been given out. These persons may have been given promotion without passing the departmental examination on peculiar facts. It is also not the case of the petitioner that these persons are junior to him. Lastly, the learned counsel for the petitioner contended that the petitioner has already attained the age of 45 years in the year 1979 and as such there is no question of passing departmental examination for promotion by the persons of this category. I do not find any substance in this contention too. The petitioner has failed to point out any statutory rule or any other Government Circular or Resolution whereunder such exemption has been granted to the employees of Prohibition and Excise Department. Exemption is not as of right. It has to be there by some statutory rule or by some resolution or Circular of the Government. It is also not the case of the petitioner that any person who has attained the age of 45 years has been given exemption from passing departmental examination for promotion in the Prohibition and Excise Department. The writ petition has no merits whatsoever, and the claim made by the petitioner therein cannot be accepted.

5. In the result this writ petition fails and the same is dismissed. Rule discharged, with no order as to costs.

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